

UNITED STATES DISTRICT COURT FOR THE  
WESTERN DISTRICT OF WASHINGTON  
AT SEATTLE

UNITED STATES OF AMERICA,  
  
Plaintiff,  
  
v.  
  
ALBERTO CRUZ REYES,  
  
Defendant.

NO. 2:18-cr-00174-RAJ

ORDER ON DEFENDANT'S MOTION  
FOR COMPASSIONATE RELEASE

This matter comes before the Court on Defendant Alberto Cruz Reyes's *pro se* motion for compassionate release. Dkt. 410. Having thoroughly considered the parties' briefing and the relevant record, the Court finds oral argument unnecessary and hereby **DENIES** the motion for the reasons explained herein.

**I. BACKGROUND**

Mr. Cruz Reyes is a 55-year-old inmate currently detained at Reeves I and II Correctional Institution, with a projected release date of October 20, 2022. On February 20, 2019, he pled guilty to one count of Conspiracy to Distribute Controlled Substances, in violation of Title 21, United States Code, Sections 841(a)(1), 841(b)(1)(B), and 846. Dkt. 269. On May 17, 2019, Mr. Cruz Reyes was sentenced by this Court to 60 months of imprisonment, to be followed by four years of supervised release. Dkt. 338.

1 Mr. Cruz Reyes has now filed a motion for compassionate release arguing that he  
2 presents extraordinary and compelling reasons for the Court to reduce his sentence to  
3 time served and release him immediately to begin his four-year term of supervised  
4 release. Dkt. 410.

## 5 II. DISCUSSION

### 6 A. Legal Standard for Compassionate Release

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8 A federal court generally “may not modify a term of imprisonment once it has  
9 been imposed. *Dillon v. United States*, 560 U.S. 817, 819 (2010) (quoting 18 U.S.C. §  
10 3582(c).

11 Under 18 U.S.C. § 3582(c)(1)(A), Congress provided an exception allowing a  
12 court to reduce a term of imprisonment for “extraordinary and compelling reasons.”  
13 While under the original statute, only the BOP Director could file such a motion, that  
14 limitation has been revised. As part of the First Step Act of 2018, Congress amended  
15 § 3582(c)(1)(A) to allow a defendant to seek a reduction from the BOP and that request  
16 has been denied or 30 days have passed.

17 Congress failed to provide a statutory definition of “extraordinary and compelling  
18 reasons.” Instead, Congress stated that the Sentencing Commission “in promulgating  
19 general policy statements regarding the sentencing modification provisions in 18 U.S.C.  
20 § 3582(c)(1)(A) shall describe what should be considered extraordinary and compelling  
21 reasons for sentence reduction.” A policy statement was issued and embodied in U.S.S.G.  
22 § 1B1.13.

23 The Sentencing Commission’s policy statement, in turn, says that a court may  
24 reduce a term of imprisonment if “the defendant is not a danger to the safety of any other  
25 person or to the community” and “extraordinary and compelling reasons warrant such a  
26 reduction.” United States Sentencing Guidelines (“USSG”) § 1B1.13. The policy  
27 statement clarifies that such reasons exist when (1) “the defendant is suffering from a  
28 terminal illness” or (2) “the defendant is suffering from a serious physical or mental

1 condition . . . that substantially diminishes the ability of the defendant to provide self-care  
2 within the environment of a correctional facility and from which he or she is not expected  
3 to recover.” USSG § 1B1.13 cmt. n.1. The policy statement also directs a court to  
4 consider the factors set forth in 18 U.S.C. § 3553(a) in deciding whether compassionate  
5 release is appropriate and what form compassionate release should take. USSC § 1B1.13  
6 cmt. n.4.

7 While the Sentencing Commission did issue a policy statement regarding  
8 “Reduction in Term of Imprisonment Under 18 U.S.C. § 3582(c)(1)(A),” *United States v.*  
9 *Aruda*, No. 20-10245, 2021 WL 1307884 (9th Cir., Apr. 8, 2021) has since held the  
10 current version of § 1B1.13 refers only to motions filed by the BOP Director and does not  
11 reference motions filed by a defendant as now allowed under § 3582(c)(1)(A).  
12 Consequently, this Court may consider U.S.S.G. § 1B1.13 in exercising its discretion, but  
13 the policy statement is not binding.

14 In adopting this rationale, the Ninth adopted the reasoning of five other circuits.  
15 In *Aruda, Id.*, the Court specifically referenced the explanation of the Fourth Circuit:

16 “[t]here is as of now no ‘applicable’ policy statement governing  
17 compassionate-release motions filed by defendants under the recently  
18 amended § 3582(c)(1)(A), and as a result, district courts are  
19 ‘empowered...to consider *any* extraordinary and compelling reason for  
20 release that a defendant might raise. ‘” *United States v. McCoy*, 981 F3d  
21 271, 284 (4th Cir. 2020) (quoting *United States v. Brooker*, 976 F.3d 228,  
22 230 (2nd Cir. 2020).”

23 Considering the foregoing, § 1B1.13 may inform this Court’s discretion for  
24 § 3582(c)(1)(A) motions filed by a defendant, but it is not binding.

25 Mr. Cruz Reyes’s motion seeks a reduction in sentence under 18 U.S.C. §  
26 3582(c)(1)(A), as amended by the First Step Act of 2018. As amended, § 3582(c)(1)(A)  
27 permits an inmate, who satisfies certain statutorily mandated conditions, to file a motion  
28 with the sentencing court for “compassionate release.”

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1       **B.       Exhaustion of Administrative Remedies**

2       Prior to considering the merits of Mr. Cruz Reyes’s motion, the Court must  
3 determine whether he has met the statutory exhaustion requirement for compassionate  
4 release. *See* 18 U.S.C. § 3582(c)(1)(A). On December 18, 2020, Mr. Cruz Reyes  
5 requested compassionate release by way of a letter to the facility administrator at Reeves  
6 I and II Correctional Institution. On January 7, 2021, the facility administrator denied his  
7 request. Dkt. 410, Ex. 1. Based on the evidence presented, the Court finds the statutorily  
8 required 30-day period has expired, and Mr. Cruz Reyes’s motion is now properly before  
9 the Court.

10       **C.       Extraordinary and Compelling Circumstances.**

11       The Court must next determine if extraordinary and compelling circumstances  
12 warrant a reduction of Mr. Cruz Reyes’s term of imprisonment. *See* 18 U.S.C.  
13 § 3582(c)(1)(A)(i).

14       To be eligible for this Court to exercise its discretion for a reduced sentence, Mr.  
15 Cruz Reyes bears the burden to show “extraordinary and compelling reasons” for  
16 compassionate release to be granted.

17       Mr. Cruz Reyes argues that has been exposed to coronavirus-19 (COVID-19), and  
18 in August of 2020, suffered from symptoms associated with the virus, including low-  
19 grade fever, sore throat, muscle pain, joint pain, shortness of breath, loss of smell and  
20 taste, and frequent headaches. He indicates he received no treatment for his symptoms,  
21 that many of his symptoms persist, and that his physical and mental health continue to be  
22 affected while he remains incarcerated. Dkt. 410.

23       Mr. Cruz Reyes further argues that the conditions at his facility preclude him from  
24 maintaining the recommendations of the Centers for Disease Control and Prevention  
25 (CDC) related to hygiene and social distancing necessary to protect himself, and that  
26 these conditions of confinement place him at risk of re-contracting COVID-19 and  
27 possibly suffering severe illness or death. Dkt. 410.  
28

1        Finally, Mr. Cruz Reyes presents an Eighth Amendment challenge, setting forth  
2 his contention that the conditions at Reeves I and II constitute cruel and unusual  
3 punishment. Dkt. 410.

4        The government opposes Mr. Cruz Reyes's motion, arguing that he has no serious  
5 medical conditions that are recognized by the CDC as placing him at higher risk of severe  
6 illness from COVID-19. Dkt. 430. The government cites the presentence report  
7 prepared in May 2019, indicating that Mr. Cruz Reyes reported no medical issues and  
8 stated that he was not taking any prescription medication at that time. PSR ¶ 49. The  
9 government further indicates that Mr. Cruz Reyes's medical records from Reeves I and II  
10 evidence that he has had numerous medical examinations during the time of his  
11 incarceration, and that he is being treated only for hyperlipidemia, or high cholesterol.  
12 Dkt. 432, Ex. A at 6, 10.

13        The government indicates that there is no evidence in the record supporting Mr.  
14 Cruz Reyes's contention that he contracted and recovered from COVID-19, but points  
15 out that current studies indicate that if he did in fact already contract the disease, he  
16 would likely be protected against future re-infection. Dkt. 430.

17        As to Mr. Cruz Reyes's claim related to the Eighth Amendment prohibition  
18 against cruel and unusual punishment, the government sets forth that such claims cannot  
19 be made in the context of a motion brought pursuant to 18 U.S.C. § 3582(c)(1)(A),  
20 particularly when Mr. Cruz Reyes's claim is so general as to apply to every inmate  
21 currently incarcerated at Reeves I and II. Dkt. 430.

22        In sum, the government argues Mr. Cruz Reyes is not suffering from any serious  
23 medical condition, is not at elevated risk from COVID-19, and that his generalized fears  
24 relating to the outbreak of the COVID-19 pandemic do not constitute extraordinary and  
25 compelling reasons to immediately release him from custody. Dkt. 430.

26        The Court agrees with the government's assessment of Mr. Cruz Reyes's petition  
27 for relief. There is no documented evidence in his medical records that he contracted the  
28 disease, yet there is evidence that he tested negative on the two occasions he was recently

1 tested. Dkt. 430, Ex. A at 17-18. This leaves the Court with nothing more in the record  
2 than Mr. Cruz Reyes's general fear of having previously contracted the disease or his fear  
3 of the possibility of contracting it in the future. General concerns about possible  
4 exposure to COVID-19 do not meet the criteria for extraordinary and compelling reasons  
5 for reduction in his sentence. Nor do such fears warrant a sentence reduction under the  
6 Court's independent assessment of the facts and circumstances presented. Mr. Cruz-  
7 Reyes presents neither evidence nor argument to suggest that his claimed infirmities  
8 relate in any way to his vulnerability or susceptibility to COVID-19.

9       The strongest evidence presented for consideration of Mr. Cruz Reyes's petition  
10 are his medical records. These records do not support his claimed justification to warrant  
11 the relief he seeks. These records indicate he has had numerous exams and is being  
12 treated for hyperlipidemia, *i.e.*, elevated cholesterol. Dkt. 430, Ex. A at 6, 10. These  
13 records further indicate he is being treated with atorvastatin for his elevated cholesterol.  
14 Dkt. 430, Ex A at 50-60, 91-95.

15       Further, Mr. Cruz Reyes has failed to present any evidence that his elevated  
16 cholesterol or any of his other conditions demonstrate that he suffers from any of the  
17 medical conditions that the CDC has identified as making an adult more likely to become  
18 severely ill from COVID-19.

19       Mr. Cruz-Reyes has also presented a dearth of articles and reports generally  
20 referencing the poor conditions at other prison facilities. Notably missing are any  
21 specific references to the GEO Group, which operates Reeves I and II where Mr. Cruz  
22 Reyes is currently housed. The government has provided evidence that the GEO Group  
23 follows the CDC's guidance on the management of COVID19 for correctional and  
24 detention facilities. The lack of any targeted evidence of the GEO Group's failure to  
25 comply with the CDC's guidance leaves this Court to conclude that Mr. Cruz Reyes's  
26 claim must fail for lack of evidence or proof.

27       Mr. Cruz Reyes's Eighth Amendment claim that the conditions under which he is  
28 being housed because of the COVID-19 pandemic are "cruel and abusive" also fails.

1       The government accurately sets forth the limitation on bringing an Eighth  
2 Amendment challenge in that such claims cannot be brought in a motion pursuant to 18  
3 U.S.C. § 3582(c)(1)(A). The Court will not recite the case law offered by the  
4 government, but rather will merely cite the references as persuasive authority. Dkt. 430,  
5 p. 9. For these reasons, the defendant's Eighth Amendment claim fails.

#### 6           **D. Safety of Others**

7       The Court next turns to whether Mr. Cruz Reyes presents a danger to the safety of  
8 any other person or to the community. As noted above, while not bound by U.S.S.G.  
9 §1B1.13, this Court exercises its discretion and will consider the 18 U.S.C. § 3553(a)  
10 factors in assessing whether a reduction in sentence is appropriate.

11       In exercising its discretion, the Court considers the nature and circumstances of  
12 the underlying offense, the weight of evidence against the defendant, his history and  
13 characteristics, and the nature and seriousness of the danger his release would pose to any  
14 person or the community.

15       Mr. Cruz Reyes does not address this factor in his motion. Despite this lack of  
16 evidence, of specific concern to this Court are the facts that served as the basis for the  
17 indictment. Mr. Cruz Reyes was a participant in a multi-kilogram conspiracy to  
18 distribute heroin. His specific role included facts that he delivered 3.5 kilograms of  
19 heroin on May 22, 2018, and one month later he was transporting 1.86 kilograms of  
20 heroin, along with the discovery of \$24,480 in cash. In addition, when his residence was  
21 searched, agents located in the master bedroom a .357 magnum revolver containing three  
22 live rounds and three spent casings. Additionally, inside of the garage agents located .40,  
23 .380 and .32 caliber handguns. PSR ¶¶ 19-21. This dangerous combination of Mr. Cruz  
24 Reyes being involved in a larger heroin distribution operation with this volume of  
25 firearms raises grave concerns of the safety of others. Mr. Cruz Reyes has offered  
26 nothing to alleviate the Court's concerns about the danger he will continue to present  
27 because of the degree of his criminal involvement in the drug conspiracy. Consequently  
28

1 he remains a danger to the community. The Court finds these are sufficient justifications  
2 to deny his early release.

3 **E. Other 18 U.S.C. § 3553(a) Factors**

4  
5 In determining whether to grant Mr. Cruz Reyes's compassionate release under 18  
6 U.S.C. § 3582(c)(1)(A), the Court also considers the relevant factors other than noted  
7 above as set forth under 18 U.S.C. § 3553(a). *See also United States v. Grimes*, No.  
8 CR11-5509 BHS, 2021 WL 319404 (W.D. Wash. Jan. 26, 2021) (summarizing relevant  
9 factors).

10 Mr. Cruz Reyes contends that the Court did not and could not have considered the  
11 conditions under which he would be confined at the time the Court imposed its sentence,  
12 and that such post-offense developments such as a global pandemic that places him at  
13 risk of serious illness or death require a reweighing of the § 3553(a) factors. Dkt. 410.

14 The government counters that a reweighing of the § 3553(a) factors does not  
15 support Mr. Cruz Reyes's release, and that none of the factors have changed since the  
16 Court originally sentenced him. In addition to creating a disparity in sentencing, the  
17 government contends that reducing Mr. Cruz Reyes's sentence would counter the goals  
18 of § 3553(a). Dkt. 430.

19 The Court agrees with the government.

20 **III. CONCLUSION**

21 For the foregoing reasons, Defendant Alberto Cruz Reyes's motion for  
22 compassionate release is **DENIED**.

23 DATED this 17th day of May, 2021.

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25 

26 The Honorable Richard A. Jones  
27 United States District Judge  
28